

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE M.C.

No. 2 CA-JV 2015-0176
Filed February 3, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pinal County
No. S1100JV201500008
The Honorable Brenda E. Oldham, Judge

AFFIRMED

COUNSEL

M. Lando Voyles, Pinal County Attorney
By Adena J. Astrowsky, Deputy County Attorney, Florence
Counsel for State

Suzuki Law Offices, L.L.C., Phoenix
By Richard J. Suzuki and Matthew Bartz
Counsel for Minor

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MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Vásquez and Judge Miller concurred.

ECKERSTROM, Chief Judge:

¶1 Appellant M.C. challenges the juvenile court's order adjudicating her delinquent for child molestation and two counts of sexual conduct with a minor. She contends the court abused its discretion in denying her motions to dismiss the delinquency proceeding, for a new adjudication hearing, and for a directed verdict. Finding no error, we affirm.

¶2 On appeal from a juvenile court's adjudication of delinquency, "we review the evidence and resolve all reasonable inferences in the light most favorable to upholding its judgment." *In re Jessi W.*, 214 Ariz. 334, ¶ 11, 152 P.3d 1217, 1219 (App. 2007). During 2013 and 2014, M.C. lived with her mother, the victim's father, and the victim, then six years old. The victim testified at the adjudication hearing in this matter that M.C. had licked her genitals while they were in the shower and that MC. touched the victim's anus and genitals with her hand. After the hearing, the juvenile court adjudicated M.C. delinquent and placed her on probation until she turned eighteen.

¶3 M.C. first argues the juvenile court erred in denying her motion to dismiss the delinquency proceeding with prejudice based on the state having violated the disclosure rules.

¶4 Rule 16(B)(1), Ariz. R. P. Juv. Ct., requires the state to disclose "[t]he names and addresses of all persons whom the prosecutor will call as witnesses at the adjudication hearing together with their relevant written or recorded statements." Likewise, the state must disclose "a list of all papers, documents" and other items "which the prosecutor will use at the adjudication hearing." *Id.*

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This disclosure is required to be made “[w]ithin ten (10) days of the advisory hearing.” *Id.* The rule further provides possible sanctions which “the court may impose” as it “finds just under the circumstances.” Ariz. R. P. Juv. Ct. 16(F). These sanctions range from “[o]rdering disclosure” to “[d]eclaring a mistrial when necessary to prevent a miscarriage of justice.” *Id.*

¶5 In this case, M.C. contends the state violated Rule 16(B)(1) by failing to timely disclose a letter written by the victim’s father stating that both M.C. and the victim were receiving counseling and that he did not wish to see charges brought against M.C. M.C. also contends that she was entitled to review “reports that were prepared in evaluating the victim” during that counseling, which she asserts “likely contain statements made by the victim which are inconsistent with the allegations in the police reports.”

¶6 M.C.’s claim of inconsistency appears to relate to the victim’s testimony at the adjudication hearing that she had licked M.C.’s “pee-pee” and “boobs.” During a sidebar discussion during the adjudication hearing, M.C.’s counsel asserted, “We do have a witness who will testify that both the prosecutor and the guardian ad litem were informed” that the victim had reported having done these things, but stated the defense had never been informed. The juvenile court determined, in relation to an objection to further testimony, that the evidence was not relevant to the charges at issue. There was a later discussion on this topic, but the nature of the “particular piece of information” was not recorded. The prosecutor, however, indicated it was not a statement by the victim herself, but rather “information heard by somebody who heard from somebody,” apparently related to something said in therapy. The court again sustained a relevancy objection relating to the evidence.

¶7 At the outset of the adjudication hearing additional information about the victim was discussed. M.C.’s counsel stated that M.C.’s mother had informed him that the victim was allowed private time to “engage in masturbatory conduct.” But counsel asserted that the mother had not informed him that the victim and M.C. were in counseling. The juvenile court determined that the information that was the subject of the motion did not “prejudice

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[M.C.] significantly” and that dismissing the proceeding was not “necessary to achieve justice.”

¶8 We review a juvenile court’s decision as to the appropriate sanction for an abuse of discretion; its “decision should not be disturbed absent a clear abuse of discretion.” *State v. Armstrong*, 208 Ariz. 345, ¶40, 93 P.3d 1061, 1069-70 (2004), quoting *State v. Hill*, 174 Ariz. 313, 325, 848 P.2d 1375, 1387 (1993). M.C. has not explained on appeal how the court abused its discretion in determining that evidence about the victim’s conduct toward her was relevant to the charges against her. Nor has she explained how she was not herself privy to information about the victim’s reciprocal acts, even without statements made in counseling. See Ariz. R. P. Juv. Ct. 16(C)(6). Furthermore, she has not meaningfully developed or supported a claim that information other than the victim’s father’s letter was subject to disclosure under Rule 16. Nor does she explain how the evidence apparently arising from the victim’s therapy would have been admissible at the adjudication hearing, particularly as, to the extent the record discloses the nature of the evidence, much of it appears to be privileged or hearsay. On this record, we cannot say the court abused its considerable discretion in refusing to grant a mistrial as a sanction for any alleged discovery violation.

¶9 M.C. next contends the juvenile court abused its discretion by denying her motion to dismiss the delinquency proceeding based on prosecutorial misconduct. She argues the prosecutor knew about the victim’s statements that she had reciprocated M.C.’s conduct well before trial, but failed to disclose the statements, which M.C. characterizes as exculpatory. But, as discussed above, M.C. has not established how the victim’s conduct is relevant to her own culpability under these circumstances. Even accepting that the victim had reciprocated, and of her own volition, M.C.’s conduct still met the statutory requirements for the delinquent acts charged. That being so, and in view of our conclusions about the discovery issues, we cannot say that any asserted misconduct by the prosecutor “so infected the [proceeding] with unfairness as to make the resulting conviction a denial of due process” or was “so pronounced and persistent that it permeate[d]

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the entire atmosphere of the [proceeding].” *State v. Roque*, 213 Ariz. 193, ¶ 152, 141 P.3d 368, 403 (2006), *quoting State v. Hughes*, 193 Ariz. 72, ¶ 26, 969 P.2d 1184, 1191 (1998).

¶10 Finally, M.C. alleges the juvenile court abused its discretion in denying her motions for a directed verdict and for a new adjudication hearing. She contends there was insufficient evidence to support a finding of delinquency. But, as described above, the victim testified M.C. had licked and touched her genitals and anus. M.C.’s argument that this evidence was insufficient is merely a request that this court reweigh the evidence presented; that we will not do. *See State v. Lee*, 189 Ariz. 590, 603, 944 P.2d 1204, 1217 (1997).

¶11 For all these reasons, we affirm the juvenile court’s adjudication and disposition orders.